

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MIGUEL WONG,

Plaintiff,

v.

COMMUNITY HEALTH CENTER LA
CLINICA,

Defendant,

No. CV-07-5004-FVS

ORDER

THIS MATTER came before the Court based upon Miguel Wong's motion to remand this case to state court and request for attorney fees due to the costs associated with the motion to remand. This order serves to memorialize the Court's oral ruling.

BACKGROUND

Miguel Wong is a member of the Community Health Center La Clinica Board of Directors. Community Health Center La Clinica ("La Clinica") is a Washington non-profit corporation governed by Revised Code of Washington (RCW) chapter 24.03. It receives some, but not all, of its funding from the United States Department of Health and Human Services ("DHHS") pursuant to the Public Health Services Act ("PHSA"), codified at 42 U.S.C. § 254b. The funding La Clinica receives pursuant to the PHSA may only be used for certain purposes

1 and must be accounted for within the strict requirements of the PHSA.

2 Mr. Wong sued La Clinica under RCW 24.03.265 and RCW 24.03.270
3 in Franklin County Superior Court on December 19, 2006, alleging that
4 actions by various Executive directors and Board members were
5 illegal, fraudulent or oppressive. La Clinica removed the action to
6 this Court on January 18, 2007, claiming that removal was proper
7 because the application of federal laws implicated in the remedies
8 sought created federal question jurisdiction. Mr. Wong moved to
9 remand the action to state court under 28 U.S.C. 1447(c) on January
10 23, 2007.

11 **RULING ON PLAINTIFF'S MOTION FOR REMAND**

12 A civil action may only be removed to federal court if it is
13 founded upon a claim arising under the Constitution or laws of the
14 United States. 28 U.S.C. § 1441(b). A case will only "arise" under
15 federal law when "a well-pleaded complaint establishes either that
16 federal law creates the cause of action or that the plaintiff's right
17 to relief necessarily depends on resolution of a substantial question
18 of federal law." *Franchise Tax Bd. Of Cal. v. Const. Laborers*
19 *Vacation Trust for Southern Cal.*, 463 U.S. 1, 27-28, 103 S. Ct. 2841,
20 2856, 77 L. Ed. 2d 420 (1983) (hereinafter "*Franchise Tax Bd.*"). A
21 court will not have jurisdiction if federal law or preemption is
22 merely a defense to the state claims, even if the defense of federal
23 law or preemption is the only issue at stake. *Id.* at 12, 103 S. Ct.
24 at 2847-48.

25 Plaintiff has not alleged a federal claim in his Complaint.
26 Plaintiff alleges only that members of La Clinica have engaged in

1 illegal, oppressive, and/or fraudulent acts and that liquidation of
2 the corporation's assets is appropriate under RCW 24.03.265. The
3 mention of federal funding in Plaintiff's complaint is used to
4 provide background information about La Clinica's public nature.
5 Compl. at ¶ XV.

6 When a well-pleaded complaint does not plead a federal claim,
7 federal-question jurisdiction may still exist in two circumstances.¹
8 One circumstance is when Congress completely preempts state law.
9 Another circumstance is when the state claim contains a substantial
10 and disputed federal issue. See *Grable & Sons Metal Prod., Inc. v.*
11 *Darue Eng'g & Mgmt.*, 545 U.S. 308, 125 S. Ct. 2363, 162 L. Ed. 2d 257
12 (2005); *Beneficial National Bank v. Anderson*, 539 U.S. 1, 123 S.Ct.
13 2058, 156 L. Ed. 2d 1 (2003).²

14 A district court has jurisdiction over the subject matter of an
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17 ¹A plaintiff may not avoid federal-question jurisdiction by
18 characterizing federal claims as state claims. Ninth Circuit
19 cases often cite the "artful pleading doctrine," a corollary to
20 the well-pleaded complaint doctrine, when looking beyond the face
21 of the complaint to determine whether the (apparently) state
claims are really federal claims. See, e.g., *Lippitt v. Raymond*
James Fin. Serv. Inc., 340 F.3d 1033, 1041 (9th Cir. 2003); *ARCO*
Envtl. Remediation v. Dep't of Health & Env'tl. Quality, 213 F.3d
1108, 1113-14 (9th Cir. 2000).

22 ²Ninth Circuit cases decided before *Grable* referred to three
23 categories where federal-question jurisdiction existed. The
24 three categories were complete preemption, claims which were
25 "necessarily federal in character", and claims that involved a
substantial and disputed federal issue. See *ARCO* 213 F.3d at
1113-14; see also *Lippitt*, 340 F.3d at 1041-42 (finding two main
categories, with "federal character" category as a subset of
substantial and disputed federal issue). However, the number of
categories appears to be a matter of semantics as *Grable*
26 considers the federal character of the claim in its test. See
Grable, 545 U.S. at 314, 125 S. Ct. at 2368.

1 (apparently) state claim when federal law completely preempts state
2 law. *Beneficial*, 539 U.S. at 8, 123 S. Ct. at 2063. Courts have
3 found, in the few instances in which they have held that a federal
4 statute completely preempts state law, that the federal statute
5 provides "the exclusive cause of action" and "set[s] forth procedures
6 and remedies governing that cause of action." *Id.* at 7-8, 123 S. Ct.
7 at 2062-63.³

8 Section 254b does not completely preempt Washington law
9 governing non-profit corporations. Section 254b only establishes
10 guidelines for receipt of federal funds. The regulations set up a
11 system for the DHHS to make sure that funds are used properly and to
12 discontinue or terminate funding, but the regulations do not create
13 remedies for the victims of fraudulent or illegal activities. See 42
14 C.F.R. § 51c.107 (defining proper use of funds); 45 C.F.R. § 74.61
15 (termination of awards); 45 C.F.R. part 16 appendix A (Board
16 established to review disputes about disallowances). There are no
17 guidelines for restructuring state-formed corporations or punishing
18 fraud by directors against the corporation or its members, nor does
19 section 254b establish a private federal cause of action.

20 Beyond complete preemption, this Court may still have federal
21 question jurisdiction if the federal issues embedded in the state
22 claim are so significant that they constitute a substantial federal
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25 ³The only examples found by the Supreme Court are the Price-
26 Anderson Act, codified at 42 U.S.C. § 2014(hh), § 301 of the
Labor Management Relations Act, 29 U.S.C. § 185, the Employee
Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*,
and the National Bank Act.

1 issue. *Grable*, 545 U.S. at 312, 125 S. Ct. at 2367; see also
2 *Lippitt*, 340 F.3d at 1042-43. In *Grable*, the Supreme Court
3 ultimately noted that the pertinent question was whether "a state law
4 claim necessarily raise[s] a stated federal issue, actually disputed
5 and substantial, which a federal forum may entertain without
6 disturbing any congressionally approved balance of federal and state
7 judicial responsibilities." *Id.* at 314, 125 S. Ct. at 2368 (finding
8 federal-question jurisdiction where issue involved determination of
9 tax law notice provision, and also noting that uniform interpretation
10 of federal tax laws provided a strong reason for granting
11 jurisdiction). Defendants seem to rely on this provision most
12 heavily, asserting that the relief requested -- to liquidate or
13 relocate La Clinica's assets -- must comply with federal requirements
14 under section 254b and is so rooted in federal law that this court
15 has jurisdiction.

16 Relatively few cases have considered whether a remedy that
17 implicates federal funding constitutes a "substantial federal issue".
18 Some courts have noted that "federal funds lurking in the background
19 . . . cannot serve as an independent basis for establishing
20 jurisdiction." *Transit Express, Inc. v. Ettinger*, 246 F.3d 1018,
21 1026 (7th Cir. 2001) (finding that federal government did not retain
22 a continued interest in federally funded vehicles); see *Able Sales*
23 *Co. v. Mead Johnson Puerto Rico Inc.*, 420 F.Supp.2d 1, 10 (D.P.R.
24 2006) (finding that though federal law was referenced in complaint,
25 claims were for breach of contract and the federal regulatory scheme
26 and funds issued under 42 U.S.C. § 1786 did not create jurisdiction).

1 These cases suggest that, without more, the existence of federal
2 funding is an inadequate foundation for subject-matter jurisdiction.
3 Predicating subject-matter jurisdiction upon the existence federal
4 funding could create "an avalanche of unforeseen" federal liability.
5 *See Transit Express*, 246 F.3d at 1026.

6 In this case, this Court does not have jurisdiction because the
7 federal law implicated by the remedy sought is not a substantial and
8 disputed federal issue. The substantiality of the federal issue is
9 small. Not all of La Clinica's assets are federally funded and the
10 federal regulations only apply to La Clinica's federally funded
11 assets if Plaintiff succeeds. Defendants, however, contend that
12 federal law governs Plaintiff's relief "to such an extent as to
13 control an essential element of Plaintiff's claim...redressability."
14 Defs' Mem. in Opp'n to Mot. to Remand at 6. Defendants' main
15 contention is that the cost principles, staffing requirements,
16 service requirements, and auditing requirements upon termination
17 involve determinations of federal law. *See* 45 C.F.R. § 74.70 *et seq.*
18 However, section 254b only states the requirements that must be met
19 in order for funds to be granted, not what happens upon dissolution
20 of the corporation. Indeed, there are relatively few regulations
21 regarding disallowance or termination of funds for not following
22 section 254b's requirements, and almost none as to how funds should
23 be handled if a community health center is dissolved prior to
24 completion of the grant. *See* 45 C.F.R. § 74.62. While it is true
25 that the remedies sought must consider federal law, Defendants
26 misconstrue what is actually at stake, as the *availability* of

1 Plaintiff's remedy to dissolve and liquidate La Clinica's assets
2 stems only from RCW 24.03.270.

3 Defendants also argue that because 45 C.F.R. § 74.37 provides
4 that federal funds and property acquired with federal funds are held
5 in trust by the La Clinica, there is a substantial federal issue.
6 However, potential disputes between the United States and the
7 plaintiff or defendant that may occur because of the remedy sought do
8 not create a substantial federal issue for *the case at hand*. Indeed,
9 here the federal funds are "lurking in the background" and are not a
10 part of the central issue of whether La Clinica's directors and
11 various members engaged in fraudulent, oppressive, or illegal
12 activities.

13 Thus, the federal issue is not substantial, nor is it disputed.
14 A Washington superior court is granted wide latitude by RCW 24.03.270
15 in appointing receivers to distribute the assets of the corporation.
16 *Id.* ("powers and duties of receiver may be increased or diminished at
17 any time"). Additionally, section 270 allows return of assets that
18 have a condition of return imposed upon them. Section 270, then,
19 does not necessitate consideration of a disputed federal law or
20 regulation.

21 Finally, the balance between state and federal judicial
22 responsibilities tilts in favor of remand. Granting remand will
23 allow the state court to decide the very large and central issue of
24 whether the activities were fraudulent, oppressive, or illegal under
25 RCW 24.03.265 and, if necessary, how to distribute the funds and
26 appoint a receivership under RCW 24.03.270. While the state court

1 would have to consider the federal regulations in crafting any remedy
2 involving distribution of federal funds, this issue only arises if
3 the Plaintiff succeeds. Congress has not clearly demonstrated that
4 federal courts are to hear such cases. Indeed, at least one
5 regulation indicates that State and local courts may hear certain
6 statutory claims. See 45 C.F.R. § 74.41 (allowing State and local
7 courts to hear statutory contract claims over which they have proper
8 jurisdiction). There is also not the strong need for uniform
9 application of federal law as there was in *Grable*. Unlike in *Grable*,
10 where the national system for collecting federal taxes was
11 potentially affected, here, the only federal implication is how La
12 Clinica's federally funded assets will be distributed. Also, the
13 State of Washington has a weighty interest in fashioning the remedies
14 Mr. Wong requests because La Clinica is a non-profit corporation,
15 created under and governed by state law. Thus, the balance between
16 state and federal responsibilities requires remand.

17 **RULING ON PLAINTIFF'S REQUEST FOR ATTORNEY FEES**

18 The defendants did not have an objectively reasonable basis for
19 removing the action. *Martin v. Franklin Capital Corp.*, 546 U.S. 132,
20 ---, 126 S. Ct. 704, 711, 163 L. Ed. 547 (2005). Consequently, the
21 Court grants Mr. Wong's request for costs, expenses, and attorney
22 fees. 28 U.S.C. § 1447(c).

23 **IT IS HEREBY ORDERED:**

- 24 1. The plaintiff's motion to remand (**Ct. Rec. 4**) is granted.
- 25 2. Counsel for the plaintiff may submit a request for costs,
26 actual expenses, and attorney fees. The request must be submitted

1 within 14 days of entry of this order.

2 3. Counsel for the plaintiff must justify, under the standard
3 established by the Ninth Circuit, both his hourly rate and the number
4 of hours of work for which he seeks compensation.

5 4. The defendant shall file a response within 14 days of the
6 date upon which counsel for the plaintiff files his request.

7 5. If the plaintiff chooses to file a reply, he must do so
8 within seven days of the filing of a response.

9 **IT IS SO ORDERED.** The District Court Executive is hereby
10 directed to enter this order and furnish copies to counsel.

11 **DATED** this 27th day of April, 2007.

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13 s/ Fred Van Sickle
Fred Van Sickle
14 United States District Judge
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